IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.678 OF 2005

Sou. Fatima Mubarak Ghanshyam .. Appellant

Versus

Smt.Sushila Haripant Deshpande & Ors. Respondents

Mr.A.M.Kulkarni for appellant

CORAM : P.V.KAKADE, J.

DATE : 18TH JULY, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl. District Judge, Sangli dated 18.10.2004 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Miraj dismissing the plaintiff's suit for partition.

2. I have heard the learned counsel for the Appellant. Perused the record.

3. It is to be noted that both the courts below in concurrent findings recorded by them have come to the conclusion that no separate suit for share is maintainable under Section 47 of the Civil Procedure Code filed by the appellant, as the decree passed in Regular Civil Suit No.144 of 1973 was binding on him.

4. On perusal of the entire record it must be noted that there is no substantial question of law involved in this appeal. The only question which is sought to be raised is to the effect that separate suit is maintainable for appellant’s 1/6th Share in the suit property. The learned appellate court judge has observed that it is crystal clear that the appellant is claiming 1/6th share in the suit property through her Vendor and admittedly the sale deed of the appellant was held to be valid to the extent of 1/6th share. If this is so, then it was incumbent upon the appellant to agitate the said point in decree final proceeding itself, which remedy she did not pursue. In my considered view, the only proper remedy for the appellant was to pursue the remedy in the decree final proceeding and not by separate suit, as it is barred

under Section 47 of the Civil Procedure Code.

5. In the result, the appeal has no merits and deserves to be dismissed. Hence the appeal stands dismissed.

. Consequently Civil Application No.1154 of 2005 also stands dismissed.